

Notice of Proposed Emergency Action and Finding of Emergency
The California Department of Tax and Fee Administration Has
Adopted Amendments to Section 3700, Cannabis Excise and Cultivation Taxes,
and New Sections 3703, Excess Cannabis Tax, 3800, Cannabis Excise Tax and
Cannabis Retailer Excise Tax Permit, 3805, Cannabis Excise Tax Credit, and
3810, Vendor Compensation, in Title 18 of the California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority vested in the Department pursuant to Revenue and Taxation Code (RTC) section 34013, has adopted California Code of Regulations (CCR), title 18, sections (Regulations or Regs.) 3703, Excess Cannabis Tax, 3800, Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit, 3805, Cannabis Excise Tax Credit, and 3810, Vendor Compensation, and amendments to Regulation 3700, Cannabis Excise and Cultivation Taxes, as emergency regulations in accordance with the Administrative Procedure Act (APA) (ch. 3.5 (commencing with section 11340) of pt. 1 of div. 3 of tit. 2 of the Government Code (GC)). Regulations 3703, 3800, 3805, and 3810 implement, interpret, and make specific the excess cannabis tax provisions in RTC sections 34012.3 and 34012.5, the cannabis tax permit provisions in RTC section 34014, the cannabis excise tax credit provided by RTC section 34011.01, and the vendor compensation provisions in RTC section 34011.1, respectively. The amendments make Regulation 3700 consistent with the adoption of Regulation 3703.

FINDING OF EMERGENCY

Section 48 Statement

Subdivision (a) of GC section 11346.1 requires that, at least five working days prior to submission of the proposed emergency regulations to the Office of Administrative Law (OAL), the Department provide a notice of the proposed emergency action to every person that has filed a request for notice of regulatory action with the Department. Subdivision (b) of GC section 11349.6 provides that after submission of the proposed emergency regulations to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations.

Statement of Emergency

Subdivision (c) of RTC section 34013 generally authorizes the Department to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the Cannabis Tax Law (CTL) (pt. 14.5 (commencing with section 34010) of div. 2 of the RTC), including, but not limited to, collections, reporting, refunds, and appeals. Subdivision (e) of RTC section 34013, as amended by Assembly Bill No. (AB) 195 (Stats. 2022, ch. 56), provides that “Until January 1, 2024, the [Department] may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under [the CTL]. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in

accordance with [the APA], and, for purposes of [the APA], including [GC section 11349.6], the adoption of the regulation is an emergency and shall be considered by [OAL] as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the [Department] may remain in effect for two years from adoption, and may be readopted in accordance with subdivision (h) of [GC section 11346.1].”

AUTHORITY

RTC section 34013.

REFERENCE

Regulation 3700: RTC sections 34010, 34011, 34012, 34013, 34015, 55041.1 and 55044, Health and Safety Code section 11018.2, and Government Code section 15570.40(b)

Regulation 3703: RTC sections 34011, 34012, 34012.3, 34012.5, 34013, 34014 and 34015

Regulation 3800: RTC sections 34011.2, 34014, 34015, 55041.1, 55050 and 55302

Regulation 3805: RTC sections 34011.01 and 55302

Regulation 3810: RTC sections 34010, 34011.1 and 34011.2

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

General Background

On June 30, 2022, the Legislature enacted AB 195. As relevant here, AB 195 amended the CTL to:

- Discontinue the imposition of the cultivation tax beginning July 1, 2022.
- Change the cannabis excise tax so it is imposed at the rate of 15 percent of the cannabis retailer’s gross receipts from the sale of cannabis or cannabis products, rather than 15 percent of the average market price of the cannabis or cannabis products, beginning January 1, 2023.
- Move the reporting and remittance of the cannabis excise tax from the distributor to the cannabis retailer beginning January 1, 2023.
- Remove the requirement for the distributor to collect the cannabis excise tax from the cannabis retailer on cannabis or cannabis products sold or transferred to the cannabis retailer on or after January 1, 2023.
- Require all cannabis retailers to obtain a separate cannabis tax permit from the Department beginning January 1, 2023.
- Allow a cannabis retailer to claim a credit for cannabis excise tax paid to a distributor on cannabis or cannabis products the retailer sold to a purchaser on or after January 1, 2023.
- Allow a licensed cannabis retailer that is approved by the Department of Cannabis

Control (DCC) for a fee waiver to retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax after they are approved by the Department.

Cultivation Tax

Subdivision (a) of RTC section 34012 imposed a cultivation tax on harvested cannabis that entered the commercial market from January 1, 2018, to June 30, 2022. Cannabis entered the commercial market on or before June 30, 2022, if the cannabis or cannabis products made from the cannabis completed and complied with both the testing and quality assurance review described in Business and Professions Code (BPC) section 26110 on or before June 30, 2022. (RTC, § 34010, subd. (m).)

Cultivators are liable for the cultivation tax imposed under RTC section 34012 until the tax is paid to the state. (RTC, § 34012, subd. (h).) Distributors and manufacturers were required to collect the cultivation tax from a cultivator on the cultivator's first sale or transfer of cannabis to a distributor or manufacturer if the sale or transfer occurred on or before June 30, 2022, even though the sale or transfer was generally prior to the imposition of the tax. (RTC, § 34012, subds. (a)(2) & (h); Reg. 3700, subd. (d).) Also, an invoice, receipt, or other document given to a cultivator by a licensed distributor or manufacturer is sufficient to relieve the cultivator from further liability for the cultivation tax to which the invoice, receipt, or other document refers. (RTC, § 34012, subd. (h).)

Once collected, the associated cultivation tax was required to follow the cannabis and the cannabis products made from the cannabis it was collected on, from one licensed party to the next, until the cannabis and cannabis products reached the distributor that performed the quality assurance review described in BPC section 26110. (RTC, § 34012, subd. (h); Reg. 3700, subd. (d).) The associated cultivation tax was imposed under RTC section 34012 if the cannabis or cannabis products completed and complied with the testing and quality assurance review requirements described in BPC section 26110 on or before June 30, 2022. If imposed, the associated cultivation tax was required to be reported and paid to the Department by the distributor that performed the quality assurance review with their return for the period in which the tax was imposed. (RTC, §§ 34012, subd. (h), & 34015, subd. (a) (as amended by section 29 of AB 195); Reg. 3700, subd. (e).) Therefore, a distributor should have already filed their last cultivation tax return with the Department. Also, subdivision (a) of RTC section 34012.5 provides that the cultivation tax required to be collected by a distributor or required to be collected by a manufacturer, and any amount unreturned to the cultivator that is not tax but was collected from the cultivator under the representation by the distributor or the manufacturer that it was tax, constitutes a debt owed by the distributor or the manufacturer to this state.

Cannabis Excise Tax Effective Before January 1, 2023

RTC section 34011 (as amended by section 19 of AB 195) applies to cannabis and cannabis products sold in this state from January 1, 2018, to December 31, 2022. Section 34011 imposes a cannabis excise tax at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer. In an arm's length transaction, the average market price is the wholesale cost of the cannabis or cannabis products sold or transferred to the cannabis retailer, plus a mark-up, as determined by the Department. (RTC, § 34010, subd. (c)(1)(A).) In a nonarm's length

transaction, the average market price is the cannabis retailer's gross receipts from the retail sale of the cannabis or cannabis products. (RTC, § 34010, subd. (c)(2).)

Subdivision (b)(1) of RTC section 34011 requires a distributor to collect the cannabis excise tax from the cannabis retailer within 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer in an arm's length transaction before January 1, 2023. It requires a distributor to collect the cannabis excise tax from the cannabis retailer within 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer in a nonarm's length transaction before January 1, 2023, or at the time of retail sale by the cannabis retailer, whichever is earlier. A distributor is also required to report and remit the cannabis excise taxes it is required to collect under RTC section 34011 to the Department on or before the last day of the month following the period in which the distributor sold or transferred the cannabis or cannabis products to the cannabis retailer. (RTC, §§ 34011, subd. (b)(1) & 34015 as amended by section 29 of AB 195; Reg. 3700, subd. (j).) Therefore, distributors will be required to file their last cannabis excise tax returns, reporting their sales and transfers of cannabis and cannabis products to cannabis retailers, with the Department on or before January 31, 2023. Distributors will also be required to remit the cannabis excise taxes on the sales and transfers required to be reported on their last returns by January 31, 2023, regardless of whether the taxes are collected or required to be collected from cannabis retailers before January 31, 2023.

In addition, subdivision (b)(1) of RTC section 34011 requires a cannabis retailer to collect the cannabis excise tax from the purchaser on their retail sales of cannabis or cannabis products before January 1, 2023. It also requires a cannabis retailer to pay their distributor(s) the cannabis excise tax required to be collected on cannabis or cannabis products the distributor(s) sold or transferred to the cannabis retailer before January 1, 2023, regardless of whether the retailer sells the cannabis or cannabis products to a purchaser before January 1, 2023. Therefore, a cannabis retailer may be required to pay cannabis excise taxes under RTC section 34011 to a distributor that it cannot collect from a purchaser because the cannabis or cannabis products will not be sold to a purchaser prior to January 1, 2023. However, a cannabis retailer may claim a credit for cannabis excise tax amounts paid to a distributor, pursuant to RTC section 34011, under specified circumstances discussed in more detail below.

Finally, subdivision (a) of RTC section 34012.5 provides that the cannabis excise tax required to be collected by a distributor, and any amount unreturned to the cannabis retailer that is not tax but was collected from the cannabis retailer under the representation by the distributor that it was tax, constitutes a debt owed by the distributor to this state. Also, subdivision (h) of Regulation 3700 defines excess cannabis excise tax to mean an amount represented by a cannabis retailer to a customer as constituting cannabis excise tax that is computed upon an amount that is not taxable or is in excess of the taxable amount, and requires a cannabis retailer to refund excess cannabis excise tax to the customer from which it was collected or remit it to a distributor so it can be reported and paid to the Department.

Cannabis Excise Tax Effective On and After January 1, 2023

Subdivision (a)(1) of RTC section 34011.2 provides that effective on and after January 1, 2023, a modified cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the gross receipts of any retail sale by a cannabis

retailer. Subdivision (c) of RTC section 34011.2 requires a cannabis retailer to collect this cannabis excise tax from the purchaser on their retail sales on and after January 1, 2023, and report and remit the tax directly to the Department pursuant to RTC section 34015 (as added by section 30 of AB 195, operative January 1, 2023). Also, subdivision (a) of RTC section 34012.3 provides that the cannabis excise tax required to be collected by a cannabis retailer, and any amount not returned to the purchaser that is not tax but was collected from the purchaser under the representation by the cannabis retailer that it was tax, constitutes debt owed by the cannabis retailer to this state.

Transition Provisions

Subdivision (a) of RTC section 34011.01 provides that any amount owed by a cannabis retailer to a distributor in connection with the collection of cannabis excise tax owed prior to January 1, 2023, shall be paid by the retailer to the distributor on or before April 1, 2023. However, this shall not be construed to require the Department to enforce this obligation.

For all cannabis and cannabis product sales by a retailer after January 1, 2023, the retailer must collect the cannabis excise tax due and remit that tax directly to the Department pursuant to RTC section 34011.2. Where a retailer has already paid excise tax on that cannabis or cannabis product to a distributor pursuant to RTC section 34011 prior to January 1, 2023, subdivision (b) of RTC section 34011.01 provides that the retailer may claim a credit on the cannabis excise tax return for those amounts. Also, subdivision (a) of RTC section 34014 requires all cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department and relieves distributors from the requirement to obtain and maintain a separate cannabis tax permit from the Department, beginning January 1, 2023.

Fee Collection Procedures Law

The Department administers the cannabis taxes imposed by the CTL under the Fee Collection Procedures Law (FCPL) (pt. 30 (commencing with section 55001) of div. 2 of the RTC). Also, when the Department determines that cannabis excise tax has been paid more than once on the same transaction, the FCPL authorizes the Department to credit the excess amount paid on amounts then due from the person that paid them and refund the balance if a timely claim for refund or credit is filed. (RTC, §§ 55221 & 55222.)

Vendor Compensation

Subdivision (a)(1) of RTC section 34011.1 (operative January 1, 2023) provides that until December 31, 2025, a licensed cannabis retailer that has received approval from DCC for a fee waiver under BPC section 26249 may retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax collected by the retailer. Approval for a fee waiver under BPC section 26249 includes approval for a fee waiver that is contingent upon the availability of funds.

Subdivision (a)(2) of RTC section 34011.1 provides that to apply to retain vendor compensation, a cannabis retailer shall complete a one-page application in a form and manner prescribed by the Department that sets forth the name under which they transact or intend to transact business, the location of their place or places of business, and any other information the Department may require. It also provides that the cannabis retailer shall include with the application their seller's

permit number and cannabis tax permit number and a copy of their cannabis license and DCC approved fee waiver. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the Department.

Subdivision (a)(3) of RTC section 34011.1 provides that upon verification that a licensed cannabis retailer meets the requirements of RTC section 34011.1, the Department shall issue the cannabis retailer a notice approving vendor compensation.

Subdivision (a)(4) of RTC section 34011.1 provides that to maintain eligibility for vendor compensation, a licensed cannabis retailer shall maintain eligibility for a fee waiver under BPC section 26249 and any relevant implementing regulations. An approval for vendor compensation shall expire on the last day of the calendar quarter following notification to the Department that a cannabis retailer is no longer eligible for a fee waiver. If a cannabis retailer maintains eligibility for a fee waiver, an approval for vendor compensation shall remain valid for one year commencing on the first day of the calendar quarter following the date the Department issues the notice and may be renewed as prescribed by the Department.

Subdivision (a)(5) of RTC section 34011.1 provides that to notify the Department of a cannabis retailer's eligibility for vendor compensation under this section, DCC shall either maintain a database accessible to the Department reflecting whether a cannabis retailer is eligible or has become ineligible for a fee waiver under BPC section 26249 and implementing regulations or otherwise provide information upon request of the Department for purposes of verifying a cannabis retailer's eligibility under RTC section 34011.1.

Also, California Code of Regulations, title 4, section (DCC Regulation) 15000.1 requires a separate commercial cannabis license for each location where a licensee engages in commercial cannabis activity. DCC Regulation 15014.1, implements BPC section 26249 and provides that commercial cannabis businesses that satisfy the requirements for a license fee waiver are only eligible for one such waiver from DCC per 12-month licensure period. DCC Regulation 15014.1 also requires a commercial cannabis business to submit a complete application for licensure or renewal as part of their application for a fee waiver and provides that DCC will only process their complete fee waiver request in the order in which the application or renewal for commercial cannabis licensure has been approved by DCC. While the fee waiver from DCC applies to a 12-month licensure period, a commercial cannabis business may reapply for a fee waiver for a subsequent licensure period.

In addition, DCC Regulation 15020 clarifies that the same commercial cannabis license can be renewed before it expires by submitting a completed license renewal form and the annual license fee to DCC no later than the last business day before it expires. It clarifies that the same commercial cannabis license can still be renewed after it expires by submitting a completed license renewal form, the annual license fee, and a 50 percent late fee to DCC within 30 calendar days after the license expired. It clarifies that in the event a license is not renewed prior to its expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any commercial cannabis or cannabis products under that license until the license is renewed. It also clarifies that a licensee that does not submit a complete license renewal application, including the late fee, to DCC within 30 calendar days after the expiration of their license shall forfeit their eligibility for a license renewal and be required to submit a new license application for a new

commercial cannabis license. Also, DCC is authorized to revoke commercial cannabis licenses and subdivision (b) of BPC section 26055 provides that revocation of a commercial cannabis license issued by DCC shall terminate the ability of the licensee to operate pursuant to that license within California until a new license is obtained.

Effect, Objective, and Benefits of Emergency Regulations

The Department reviewed the CTL after it was amended by AB 195 and determined that:

- The CTL provides that amounts that are not tax but were collected as cultivation or excise tax and not returned to the cultivator, retailer, or purchaser that paid them constitute debts owed to the state, and creates issues because it does not provide procedures for such excess cannabis tax to be returned, remitted, or collected. Also, there is a related issue because the procedures for the remittance of excess cannabis excise tax in subdivision (h) of Regulation 3700 will be outdated and create confusion after the CTL requires cannabis retailers to report and remit cannabis excise tax directly to the Department and no longer requires distributors to collect cannabis excise tax from retailers and report and remit it to the Department.
- The CTL requires cannabis retailers to obtain a separate cannabis tax permit from the Department beginning January 1, 2023, but does not clarify how cannabis retailers apply for such a permit.
- The CTL authorizes a cannabis retailer to claim a credit on their tax return for cannabis excise tax paid to a distributor under RTC section 34011 on cannabis or cannabis products the retailer sold on or after January 1, 2023. However, it creates issues because it does not clarify whether the credit must be claimed on a specific return, whether the amount of the credit can be refunded if not claimed on the proper return, or what documentation must be retained to substantiate a credit or refund.
- The CTL authorizes a licensed cannabis retailer that has received approval from DCC for a fee waiver under BPC section 26249 to retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax for specified periods after they apply for and receive approval from the Department. However, it creates issues because it requires the Department to prescribe the form and manner of filing the application for approval. It does not specify or further clarify the taxes from which vendor compensation may be retained or the type of fee waiver a licensed cannabis retailer must receive to be approved to retain vendor compensation. It does not clarify how vendor compensation shall be reported on a return or what a licensed cannabis retailer must do if they remit taxes they were eligible to retain. Also, licensed cannabis retailers that are approved to retain vendor compensation may have trouble understanding how the statutory retention periods work.

Therefore, the Department proposed to adopt Regulation 3703, Excess Cannabis Tax, to be included in chapter 8.7, Cannabis Tax Regulations, in division 2 of title 18 of the CCR (chapter 8.7) to prescribe procedures for excess cannabis tax collected before and after January 1, 2023, to be returned to the person that paid it, or remitted to or collected by the Department, which will supersede the provisions in subdivision (h) of Regulation 3700. The Department proposed to adopt Regulation 3800, Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit, to clarify how the cannabis excise tax applies on and after January 1, 2023, and how cannabis retailers can obtain a cannabis retailer excise tax permit from the Department. The Department proposed to

adopt Regulation 3805, Cannabis Excise Tax Credit, to clarify when a cannabis retailer may claim a credit on their return under RTC section 34011.01, clarify that a cannabis retailer may file a claim for refund for the amount of the credit if not claimed on the proper return, and clarify the documentation that must be retained to substantiate a credit or refund. The Department proposed to adopt Regulation 3810, Vendor Compensation, to specify the cannabis excise taxes from which vendor compensation may be retained under RTC section 34011.1, specify the type of fee waiver a licensed cannabis retailer must receive to be approved to retain vendor compensation, prescribe the form and manner of filing the application for approval to retain vendor compensation, clarify the statutory retention periods, clarify how vendor compensation shall be reported on a return, and clarify that a licensed cannabis retailer must file a claim for refund if they remit taxes they were eligible to retain.

In addition, the Department proposed to amend subdivision (h) of Regulation 3700 to clarify that its provisions are superseded by Regulation 3703. The Department proposed to add new chapter 8.8, Cannabis Excise Tax Effective on and after January 1, 2023, to division 2 of title 18 of the CCR (chapter 8.8) so the new chapter could include Regulations 3800, 3805 and 3810 and any other new regulations that only implement, interpret, and make specific the provisions of the cannabis excise tax effective on and after January 1, 2023, and help distinguish those regulations from the regulations in chapter 8.7. The Department also proposed to adopt the amendments to subdivision (h) of Regulation 3700, chapter 8.8, and Regulations 3703, 3800, 3805, and 3810, as emergency regulations to ensure that the guidance provided by Regulation 3703 is in place as soon as possible and the guidance provided by Regulations 3800, 3805, and 3810 is in place as close as possible to when the provisions of RTC sections 34011.01, subdivision (b), 34011.1, 34011.2, and 34014, subdivision (a)(2), are operative on January 1, 2023.

Regulation 3703, Excess Cannabis Tax

Any amount a distributor or manufacturer collected from a cultivator under the representation that it was cultivation tax that was computed upon an amount that is not subject to cultivation tax or was in excess of the amount of cultivation tax required to be collected from the cultivator is not tax and constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the cultivator that paid it. Any amount a distributor or manufacturer collected from a cultivator under the representation that it was cultivation tax on cannabis or cannabis used to make cannabis products that did not enter the commercial market on or before June 30, 2022, is not tax and constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the cultivator that paid it. Any amount a distributor collected from a cannabis retailer under the representation by the distributor that it was cannabis excise tax that was computed upon an amount that is not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the cannabis retailer constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the retailer that paid it. Additionally, any amount a cannabis retailer collected from a purchaser under the representation that it was cannabis excise tax that was computed upon an amount that is not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the purchaser constitutes debt owed by the cannabis retailer to this state under RTC section 34012.3, unless it is returned to the purchaser that paid it. Therefore, the Department proposed to adopt Regulation 3703, as an emergency regulation, to define excess cannabis tax to include all of the amounts described above and provide procedures to ensure that excess cannabis tax is refunded to the

person that paid it or paid to the Department.

Subdivision (a) of the proposed regulation provides a definition of “excess cannabis tax” that includes all of the amounts described above. Subdivision (b) incorporates the provisions of RTC sections 34012.3 and 34012.5 providing that any amount of excess cannabis tax that is not returned to the purchaser, cannabis retailer, or cultivator that paid it constitutes a debt owed to this state. Subdivision (c) provides general procedures for a cannabis retailer to refund excess cannabis tax to a purchaser or remit the excess tax to the Department when the cannabis retailer determines that it collected the excess cannabis tax, unless the retailer remitted the excess tax to a distributor pursuant to Regulation 3700 prior to the effective date of Regulation 3703.

Subdivision (d) provides procedures for manufacturers to refund excess cannabis tax to the cultivator that paid it or notify the Department so it can collect the excess cannabis tax unless it was transferred to a distributor to report and remit to the Department prior to the effective date of Regulation 3703. Subdivision (d) also provides procedures for distributors to refund excess cannabis tax to the cultivator or cannabis retailer that paid it or notify the Department so the Department can collect the excess cannabis tax unless the excess cannabis tax was remitted to the Department on or before January 31, 2023. The Department proposes to adopt these procedures because manufacturers are not required to report and pay cannabis excise taxes to the Department; distributors should file their last cannabis tax returns with the Department on or before January 31, 2023; and any excess cannabis tax held by distributors or manufacturers after January 31, 2023, represents a debt owed to the state, unless it is returned to the cultivator or retailer that paid it.

Subdivision (e) provides procedures for cannabis retailers, distributors, and manufacturers to refund unreturned excess cannabis tax that has not been paid to the state once the Department determines they collected it. Additionally, subdivision (e) provides procedures for the Department to issue a notice of determination (NOD) for any amounts cannabis retailers, distributors, and manufacturers fail or refuse to refund to the person that paid it and provisions for when the NOD becomes final and collectible. Finally, subdivision (e) includes provisions for cannabis retailers, distributors, and manufacturers to file a petition for redetermination if they do not agree with their NODs.

Subdivision (f) prescribes the requirements for cannabis retailers, distributors, and manufacturers to establish that excess cannabis tax has been or will be refunded to the person that paid it. Subdivision (g) requires a cannabis retailer, distributor, or manufacturer to maintain and make available all records necessary for the Department to determine if they owe excess cannabis tax to the state. Also, subdivision (h) of the proposed regulation clarifies that Regulation 3703 supersedes the excess cannabis excise tax provisions provided in subdivision (h) of Regulation 3700 so there is no conflict between the two regulations.

Regulation 3800, Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit

RTC section 34011.2 provides that effective on and after January 1, 2023, a cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at a rate of 15 percent of the gross receipts of any retail sale by a cannabis retailer. RTC section 34011.2 provides that a cannabis retailer shall be responsible for collecting the cannabis excise tax from

the purchaser and remitting that tax to the Department. Also, subdivision (a)(2) of RTC section 34014 requires all cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department and prohibits any person from engaging in business as a cannabis retailer without such a permit, beginning January 1, 2023. Therefore, the Department proposed to adopt Regulation 3800, as an emergency regulation, to clarify the application of the cannabis excise tax imposed on and after January 1, 2023, incorporate the requirement for a person to have a cannabis tax permit from the Department to engage in business as a cannabis retailer on and after January 1, 2023, and clarify how a person can obtain such a permit.

Subdivision (a) of the proposed regulation defines and clarifies the meaning of terms used in the regulation. As relevant here, it provides that “business information” means information the Department deems necessary to determine if a person is required to obtain a cannabis retailer excise tax permit from the Department, determine if the person is required to remit the cannabis excise tax it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person’s books and records. Such information includes, but is not limited to, the name of the person’s business, the addresses of the person’s business locations, the date the person’s business started or will start, the business’s business activities, the business’s projected revenue, and the name and contact information of at least one individual the Department may contact to obtain access to the business’s books and records. It provides that “contact information” means information the Department deems necessary to contact and communicate with a person applying for a cannabis retailer excise tax permit and with that person’s authorized representative(s). Such information includes, but is not limited to, a current mailing address, email address, and telephone number. It provides that “Department” means the California Department of Tax and Fee Administration. It provides that “identifying information” means information the Department deems necessary to specifically identify a person applying for a cannabis retailer excise tax permit. Such information includes the person’s name, the person’s type (e.g., individual, partnership, limited liability company, corporation, etc.), and the person’s federal Employer Identification Number, and may also include, but is not limited to, the person’s driver’s license number or other government-issued identification card number or entity number issued by the California Secretary of State. It provides that “ownership information” means information the Department deems necessary to identify the owners of an entity or business. Such information includes, but is not limited to, the owners’ names and contact information. It also provides that “representative information” means information the Department deems necessary to verify that the individual who submitted an application for a cannabis retailer excise tax permit is the person applying for a cannabis retailer excise tax permit or is authorized to submit the application on behalf of the person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the individual’s name, title, and contact information.

Subdivision (b) of the proposed regulation clarifies that RTC section 34011.2 imposes cannabis excise tax on purchasers of cannabis or cannabis products sold at retail in this state on and after January 1, 2023, at a rate of 15 percent of the cannabis retailer’s gross receipts from the retail sale of cannabis or cannabis products to the purchaser. Additionally, subdivision (b) provides that the cannabis retailer is responsible for collecting the cannabis excise tax imposed by RTC section 34011.2 from the purchaser and remitting that tax to the Department. Subdivision (c) of the proposed regulation incorporates the requirement for a person to have a cannabis tax permit from the Department to engage in business as a cannabis retailer on and after January 1, 2023.

Subdivision (d) of the proposed regulation requires a person to complete and submit an application for a cannabis retailer excise tax permit through the Department's online services portal via its website at www.cdtfa.ca.gov to obtain a cannabis retailer excise tax permit. It also clarifies that every application for a cannabis retailer excise tax permit shall provide the applicant's identifying information, contact information, business information, ownership information, and representative information.

Regulation 3805, Cannabis Excise Tax Credit

RTC section 34011.01 provides that any amount owed by a cannabis retailer to a distributor in connection with the collection of cannabis excise tax owed prior to January 1, 2023, shall be paid by the retailer to the distributor. RTC section 34011.01 provides that a cannabis retailer may claim a credit on their cannabis tax return for cannabis excise tax paid to a distributor, pursuant to RTC section 34011, before January 1, 2023, on cannabis or cannabis products the retailer sold to a purchaser on or after January 1, 2023, in a retail sale for which it is responsible for collecting and remitting cannabis excise tax to the Department under RTC section 34011.2.

In addition, for purposes of a cannabis retailer claiming a cannabis excise tax credit, the Department is not aware of any significant difference between cannabis excise tax a retailer paid to a distributor, pursuant to RTC section 34011, before or after January 1, 2023, on cannabis or cannabis products:

- The distributor sold or transferred to the cannabis retailer prior to January 1, 2023; and
- The cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2.

When a cannabis retailer pays cannabis excise tax to a distributor after January 1, 2023, on cannabis or cannabis products sold or transferred to the cannabis retailer before January 1, 2023, pursuant to RTC section 34011, and then remits cannabis excise tax on the retail sale of the same cannabis or cannabis products after January 1, 2023, pursuant to RTC section 34011.2, the FCPL authorizes the Department to credit the amount the retailer paid to the distributor against the amounts owed by the retailer and refund the difference because the retailer paid cannabis excise tax twice on the same transaction. Also, nothing indicates that the enactment of RTC section 34011.01 was intended to limit the Department's authority to credit or refund amounts under the FCPL. Therefore, the Department proposed to adopt Regulation 3805 to provide regulatory guidance to cannabis retailers about how to claim a credit on their cannabis tax return for cannabis excise tax amounts they paid to a distributor, pursuant to RTC section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2.

Subdivision (a) incorporates the provisions of RTC section 34011.01. It also clarifies those provisions and expands them slightly to further implement the Department's authority to grant credits and refunds in the FCPL. Subdivision (a) provides that a cannabis retailer may claim a credit on their cannabis tax return for the cannabis excise tax amount the cannabis retailer paid to a distributor, pursuant to RTC section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold

to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2. Subdivision (a) clarifies that the credit must be taken on the cannabis retailer's cannabis tax return filed for the period in which the retail sale of the cannabis or cannabis products occurred. If the credit is not taken on the proper return, the cannabis retailer may file a claim for refund for the amount for which they could have claimed a timely credit. Subdivision (a) also clarifies that a cannabis retailer may not claim a credit or refund under RTC section 34011.01 for any amount that a distributor refunded to the retailer. Subdivision (b) explains the records necessary to support a cannabis excise tax credit or refund.

Regulation 3810, Vendor Compensation

RTC section 34011.1, operative January 1, 2023, provides that until December 31, 2025, a licensed cannabis retailer that has received approval from DCC for a fee waiver under BPC section 26249 may retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax. To apply to retain vendor compensation, a cannabis retailer shall complete a one-page application in a form and manner prescribed by the Department and include a copy of their DCC issued cannabis license and DCC approved fee waiver. The Department shall issue the cannabis retailer a notice approving the vendor compensation upon verification that the cannabis retailer meets the requirements of RTC section 34011.1. An approval is generally valid for one year. Therefore, the Department proposed to adopt Regulation 3810 to prescribe the form and manner of the application to retain vendor compensation, clarify the requirements to receive approval to retain vendor compensation, clarify the periods for which vendor compensation may be retained, clarify the cannabis excise taxes from which vendor compensation may be retained, and provide procedures for reporting vendor compensation.

Subdivision (a) of the proposed regulation defines and clarifies the meaning of terms used in the regulation. As relevant here, it clarifies that "cannabis excise tax" means the cannabis excise tax imposed by RTC section 34011.2. It clarifies that "fee waiver" means a retailer license fee waiver or retailer license renewal fee waiver. It clarifies that a licensed cannabis retailer is a cannabis retailer that has obtained a retailer license pursuant to division 10 (commencing with Section 26000) of the BPC. It also clarifies that "licensed retail premises" means the physical location from which commercial cannabis activities are authorized to be conducted under a retailer license.

Subdivision (b) incorporates the first sentence in subdivision (a)(1) of RTC section 34011.1 and clarifies that a licensed cannabis retailer may retain vendor compensation in an amount equal to 20 percent of the cannabis excise taxes imposed on the cannabis retailer's retail sales of cannabis or cannabis products authorized under their retailer license for one licensed retail premises if the licensed retailer has received: (1) approval from DCC for a fee waiver that applies to the issuance or renewal of that retailer license; and (2) a notice from the Department approving the licensed cannabis retailer to retain vendor compensation from the cannabis excise taxes imposed on their retail sale of cannabis or cannabis products authorized under that retailer license. The clarifications make the regulation consistent with DCC's regulations, which only provide for the issuance of license fee waivers, provide that a licensee shall be eligible for one license fee waiver from the DCC per 12-month licensure period, and require a separate license for each location where a licensee engages in commercial cannabis activity.

Subdivisions (c)(1), (2), and (3) implement subdivision (a)(2) of RTC section 34011.1. Subdivision (c)(1) requires a licensed cannabis retailer to request approval to retain vendor compensation by submitting a completed Vendor Compensation Application through the Department's online services portal. Subdivision (c)(2) requires a completed application to include the information required by subdivision (a)(2) of RTC section 34011.1 and clarifies that the place or places of business referred to in subdivision (a)(2) of RTC section 34011.1 are the place or places where the licensed cannabis retailer is authorized to engage in retail sales of cannabis or cannabis products. In addition to the information required to be included on applications by statute, the Department proposed that the cannabis retailer must indicate the place where commercial cannabis activities are authorized to be conducted under the retailer license for which DCC approved the licensed cannabis retailer's fee waiver, the issuance and expiration date and number of that retailer license, and the date DCC approved the fee waiver to assist with determining eligibility to retain vendor compensation. The Department also proposed that the cannabis retailer must provide the contact information for the individual completing the application in case the Department needs to contact them to obtain additional information. Subdivision (c)(3) requires a completed application to be submitted with the documents required by subdivision (a)(2) of RTC section 34011.1 and clarifies that a retailer is required to submit a copy of the retailer license for which DCC approved the fee waiver.

Subdivision (c)(4) implements subdivision (a)(3) of RTC section 34011.1. It provides that the Department will notify the cannabis retailer in writing as to whether the cannabis retailer is approved to retain vendor compensation and if they are approved, the Department will also specify the quarterly periods for which they are approved to retain vendor compensation.

Subdivision (d) incorporates and clarifies subdivisions (a)(4) and (5) of RTC section 34011.1. It provides that an approval to retain vendor compensation is effective on the first day of the calendar quarter commencing after the date in which the Department issues a notice approving a Vendor Compensation Application and is valid for that calendar quarter. Additionally, it clarifies that, in general, an approval for vendor compensation remains valid for four consecutive calendar quarters. Subdivision (d)(3) clarifies that unless an approval to retain vendor compensation would expire earlier pursuant to subdivision (d)(2), an approval to retain vendor compensation expires on the last day of the calendar quarter commencing after the date DCC first notifies the Department that the cannabis retailer is no longer eligible for a fee waiver. Pursuant to RTC section 34011.1, DCC may either update a database which is accessible to the Department to reflect that the cannabis retailer has become ineligible for a fee waiver or otherwise provide the Department information reflecting the cannabis retailer has become ineligible for a fee waiver at the Department's request and for purposes of verifying a cannabis retailer's eligibility to retain vendor compensation. The Department understands that the cannabis retailer is not eligible for a fee waiver when they no longer meet the eligibility requirements as provided in BPC section 26249 and DCC Regulation 15014.1. For example, a cannabis retailer would no longer be eligible for a license fee waiver under DCC Regulation 15014.1 if their gross revenues exceed \$5,000,000 or if the ownership requirements are not met.

Subdivision (d) further clarifies that a licensed cannabis retailer may not retain vendor compensation from the cannabis excise taxes required to be reported for any period after the date their approval to retain vendor compensation expires. Finally, subdivision (d) provides examples to illustrate the specified retention periods. The first example provides that a licensed cannabis

retailer that is approved to retain vendor compensation during the first calendar quarter of 2023 will be approved to retain vendor compensation, as provided in subdivision (b), for the second, third, and fourth calendar quarters of 2023, and first calendar quarter of 2024, unless the approval to retain vendor compensation expires earlier under subdivision (d)(3). The second example provides that if DCC notifies the Department in the first calendar quarter of 2024 that a cannabis retailer is no longer eligible for a fee waiver, the approval to retain vendor compensation expires on the last day of the second calendar quarter, unless the approval to retain vendor compensation already expired under subdivision (d)(2).

Subdivision (e) clarifies that an approval to retain vendor compensation only approves a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under the retailer license for which they received approval from DCC for a fee waiver. Subdivision (e) also clarifies that an approval to retain vendor compensation does not approve a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on retail sales made after their retailer license for which they received approval from DCC for a fee waiver has expired and before that license is renewed, or made after that retailer license is revoked, or made under any other retailer license.

Subdivision (f) provides that a new Vendor Compensation Application must be submitted if the licensed cannabis retailer's previous approval has expired or their retailer license for which they received approval from the DCC for a fee waiver has expired and not been renewed or has been revoked. Subdivision (g) requires a licensed cannabis retailer to report the vendor compensation retained from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products, pursuant to subdivision (b), as a credit on their Cannabis Retailer Excise Tax Return for the corresponding reporting period in which the cannabis retailer made the retail sales of the cannabis or cannabis products. Subdivision (g) also provides that a cannabis retailer must file a timely claim for refund with the Department to obtain a refund for any amount of cannabis excise tax it remitted to the Department that it was eligible to retain. Finally, subdivision (h) of the proposed regulation clarifies that a cannabis retailer shall not retain vendor compensation from cannabis excise taxes imposed on retail sales of cannabis or cannabis products made after December 31, 2025, as provided in subdivision (a)(1) of RTC section 34011.1.

Interested Parties Comments

The Department distributed a discussion paper explaining proposed Regulations 3703, 3805, and 3810 to the interested parties on September 30, 2022, and held an interested parties meeting on October 6, 2022, to obtain public input.¹ The interested parties asked general questions about AB 195 and the proposed regulations during the October 7, 2022, meeting, but did not have any specific comments regarding the text of the proposed regulations. Nabis, a licensed distributor, submitted a letter dated October 17, 2022, following the interested parties meeting, but the Department did not receive any other written comments following the interested parties meeting. Nabis's October 17, 2022, letter did not include any specific comments regarding the text of the proposed regulations, but requested that the Department consider adopting the following

¹ Regulations 3805 and 3810 were numbered as Regulations 3704 and 3705 respectively in the discussion paper,

additional policies to ensure cannabis distributors remain solvent and operational:

1. “New language in [subdivision (a) of RTC section 34011.01] makes clear that retailers must pay any outstanding excise tax balances to distributors by April 1, 2023. The Department must contemplate regulatory language, and any existing enforcement mechanism or authority already at its disposal, to ensure retailers adhere to this deadline and pay outstanding balances to distributors in a timely manner. Without oversight of this provision by the Department, significant outstanding tax balances that distributors have prepaid on behalf of retailers will remain uncollected, further straining the supply chain.”

2. “A significant amount of excise tax funds distributors have prepaid to the state on behalf of retailers will be impossible to recoup, as many businesses are now defunct or completely insolvent. As such, distributors must have the ability to claim credit toward future tax returns - particularly Q1 2023 - proportional to the amount of excise tax funds they have floated on behalf of retailers but are unable to collect. This affords the same opportunity as the credit for retailers established in AB-195 to ensure they are not overly burdened with tax liability.”

The Department considered Nabis’s comments. However, the second sentence in subdivision (a) of RTC section 34011.01 makes it clear that the subdivision “shall not be construed to require the [Department] to enforce” retailers’ debts due by April 1, 2023, and does not indicate that the Legislature intended for the Department to enforce cannabis retailers’ debts to distributors. Also, the Department is not aware of any statute authorizing a distributor to claim a credit for cannabis excise taxes it was required to report and remit to the Department because the distributor was unable to collect the cannabis excise taxes from a cannabis retailer. Therefore, the Department is not proposing to adopt the policies requested in Nabis’s October 17, 2022, letter, at this time and the Department did not make any changes to the proposed regulations in response to Nabis’s comments.

Adoption of the New Chapter and Proposed Regulations as Emergency Regulations

The Department adopted the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and Regulations 3703, 3800, 3805, and 3810, as emergency regulations, because the Department determined that their adoption, as emergency regulations, is necessary to have the effect and accomplish the objective of addressing the issues regarding excess cannabis tax discussed above as soon as possible and addressing the other issues regarding the CTL discussed above as close as possible to when the provisions of RTC sections 34011.01, subdivision (b), 34011.1, 34011.2, and 34014, subdivision (a)(2), are operative on January 1, 2023. The Department anticipates that the adoption of the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and emergency Regulations 3703, 3800, 3805, and 3810 will promote fairness and benefit cultivators, manufacturers, distributors, cannabis retailers, purchasers, and the Department by:

- Prescribing updated procedures for excess cannabis tax to be returned, remitted, or collected;
- Clarifying when a cannabis retailer may claim a credit on their return under RTC section 34011.01, clarifying that a cannabis retailer may file a claim for refund for the amount of the credit if not claimed on the proper return, and clarifying the documentation that must

- be retained to substantiate a credit or refund; and
- Specifying the cannabis excise taxes from which vendor compensation may be retained under RTC section 34011.1, specifying the type of fee waiver a licensed cannabis retailer must receive to be approved to retain vendor compensation, prescribing the form and manner of filing the application for approval to retain vendor compensation, clarifying the statutory retention periods, clarifying how vendor compensation shall be reported on a return, and clarifying that a licensed cannabis retailer must file a claim for refund if they remit taxes they were eligible to retain.

The Department has performed an evaluation of whether the amendments to subdivision (h) of Regulation 3700 and emergency Regulations 3703, 3800, 3805, and 3810 are inconsistent or incompatible with existing state regulations and determined that the regulations are not inconsistent or incompatible with existing state regulations. This is because Regulation 3703 supersedes the inconsistent provisions in subdivision (h) of Regulation 3700, Regulation 3800 is the only regulation that implements subdivision (a)(2) of RTC section 34014, Regulation 3805 is the only regulation that implements RTC section 34011.01, and Regulation 3810 is the only regulation that implements RTC section 34011.1. In addition, the Department has determined that there are no comparable federal regulations or statutes to the amendments to subdivision (h) of Regulation 3700 and Regulations 3703, 3800, 3805, and 3810.

DOCUMENTS RELIED UPON

The Department relied upon Department staff's understanding of the CTL and FCPL in proposing to adopt the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and emergency Regulations 3703, 3800, 3805, and 3810. The Department did not rely upon any technical, theoretical, or empirical study, report, or similar document.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the adoption of the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and emergency Regulations 3703, 3800, 3805, and 3810 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE-TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Department has determined that the adoption of the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and emergency Regulations 3703, 3800, 3805, and 3810 will result in an absorbable \$484 one-time cost for the Department to update its website after the emergency rulemaking process is completed (assuming that average hourly compensation costs are \$60.55 per hour and that it will take approximately eight hours). The Department has determined that the adoption of the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and emergency Regulations 3703, 3800, 3805, and 3810 will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title

2 of the GC, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

EFFECTIVE PERIOD

Subdivision (e) of RTC section 34013 provides that the emergency regulations adopted by the Department to implement, administer, and enforce the CTL “may remain in effect for two years from adoption” and may be readopted in accordance with subdivision (h) of GC section 11346.1. Therefore, the amendments to subdivision (h) of Regulation 3700, new chapter 8.8, and emergency Regulations 3703, 3800, 3805, and 3810 shall be effective immediately upon filing with the Secretary of State and shall remain in effect for two years from that date, unless the Department amends or repeals them before the expiration of the two-year period.

CONTACT PERSON

Questions about the amendments to subdivision (h) of Regulation 3700 and emergency Regulations 3703, 3800, 3805, and 3810 should be directed to Ms. Sarah Smith, Business Taxes Specialist II, by telephone at 916-309-5292 or by email at BTFD-BTC.InformationRequests@cdtfa.ca.gov.

TEXT OF AMENDMENTS TO REGULATION 3700, NEW CHAPTER 8.8, AND EMERGENCY REGULATIONS 3703, 3800, 3805, AND 3810

Regulation 3700. Cannabis Excise and Cultivation Taxes.

(a) Definitions. For purposes of this chapter (Cannabis Tax Regulations, commencing with Regulation 3700), the definitions of terms in part 14.5, Cannabis Tax, (commencing with section 34010) of division 2 of the Revenue and Taxation Code shall apply and the following terms are defined or further defined below.

(1) “California Cannabis Track-and-Trace system” means the system all persons licensed pursuant to division 10 (commencing with section 26000) of the Business and Professions Code are required to use to record the inventory and movement of cannabis and cannabis products through the commercial cannabis supply chain.

(2) “Cannabis accessories” shall have the same meaning as set forth in section 11018.2 of the Health and Safety Code.

(3) “Cannabis flowers” means the flowers of the plant *Cannabis sativa* L. that have been harvested, dried, trimmed or untrimmed, and cured, and prior to any processing whereby the plant material is transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. The term “cannabis flowers” excludes leaves and stems removed from the cannabis flowers prior to the cannabis flowers being transferred or sold.

(4) “Cannabis leaves” means all parts of the plant *Cannabis sativa* L. other than cannabis flowers that are sold or consumed.

(5) “Cultivator” means all persons required to be licensed to cultivate cannabis pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that cultivates cannabis as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(6) “Distributor” means a person required to be licensed as a distributor pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that acts as a licensed distributor as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(7) “Fresh cannabis plant” means the flowers, leaves, or a combination of adjoined flowers, leaves, stems, and stalk from the plant *Cannabis sativa* L. that is either cut off just above the roots, or otherwise removed from the plant.

To be considered “fresh cannabis plant,” the flowers, leaves, or combination of adjoined flowers, leaves, stems, and stalk must be weighed within two hours of the plant being harvested and without any artificial drying such as increasing the ambient temperature of the room or any other form of drying, or curing and must be entered into the California Cannabis Track-and-Trace system, manifested, and invoiced as “fresh cannabis plant.” If the California Cannabis Track-and-Trace system is not available, or a licensee is not required to record activity, the paper manifest or invoice shall indicate “fresh cannabis plant” is being sold or transferred.

(8) “Manufacturer” means a person required to be licensed as a manufacturer pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that acts as a licensed manufacturer as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(9) “Ounce” means 28.35 grams.

(10) “Plant waste” means waste of the plant *Cannabis sativa* L. that is managed pursuant to the cannabis waste management provisions of chapter 1, division 8 of title 3 of the California Code of Regulations.

(11) “Wholesale cost” means:

(A) Prior to January 1, 2020, the amount paid by the cannabis retailer for the cannabis or cannabis products, including transportation charges. Discounts and trade allowances must be added back when determining wholesale cost.

For purposes of this subdivision, “discounts or trade allowances” are price reductions, or allowances of any kind, whether stated or unstated, and include, without limitation, any price reduction applied to a supplier’s price list. The discounts may be for prompt payment, payment in cash, bulk purchases, related-party transactions, or “preferred-customer” status.

(B) On and after January 1, 2020, the amount paid by the cannabis retailer for the cannabis or cannabis products, including transportation charges.

(b) Collection of Cultivation Tax When Testing Requirement is Waived. For purposes of the cultivation tax imposed on all harvested cannabis that enters the commercial market pursuant to section 34012 of the Revenue and Taxation Code, when the testing requirement is waived pursuant to subdivision (1) of section 26070 of the Business and Professions Code, a distributor shall collect the cultivation tax from cultivators when cannabis is transferred or sold to the distributor.

(c) Cultivation Tax. For transactions made on and after January 1, 2018, the rate of the cultivation tax applies as follows:

(1) Per dry-weight ounce of cannabis flowers, and at a proportionate rate for any other quantity.

(2) Per dry-weight ounce of cannabis leaves, and at a proportionate rate for any other quantity.

(3) Per ounce of fresh cannabis plant, and at a proportionate rate for any other quantity.

(d) Cultivation Tax Invoicing Requirements. A cultivator is liable for the cultivation tax imposed pursuant to section 34012 of the Revenue and Taxation Code. A cultivator’s liability for the cultivation tax is not extinguished until the cultivation tax has been paid to the State, except as otherwise provided in subdivision (h) of Revenue and Taxation Code section 34012.

(1) The distributor shall provide to the cultivator, or to the manufacturer if the cannabis was first sold or transferred to a manufacturer, an invoice, receipt, or similar document that identifies the licensee receiving the product, the originating cultivator, associated unique identifier of the cannabis, the amount of cultivation tax, and the weight and category of the cannabis. The weight and category of the cannabis identified on the invoice shall equal the weight and category of the cannabis entered into the California Cannabis Track-and-Trace system.

(2) The manufacturer shall provide to the cultivator when a cultivator sells or transfers cannabis to a manufacturer, an invoice, receipt, or similar document that identifies the licensee receiving the product, the originating cultivator, the associated unique identifier of

the cannabis, the amount of cultivation tax, and the weight and category of the cannabis. The weight and category of the cannabis identified on the invoice shall equal the weight and category of the cannabis entered into the California Cannabis Track-and-Trace system.

(3) The manufacturer shall include on the invoice, receipt, or similar document to the distributor or the next party in the transaction, the associated weight and category of the cannabis used to produce the cannabis products. This associated cultivation tax and the weight and category of the cannabis used to produce a cannabis product shall follow the cannabis product from one party to the next until it reaches a distributor for quality assurance review, as described in section 26110 of the Business and Professions Code.

(e) Remittance of Cultivation Tax. A distributor who conducts the required quality assurance review before the cannabis or cannabis products can be sold or transferred to a cannabis retailer pursuant to section 5307, of chapter 2, division 42 of title 16 of the California Code of Regulations, is responsible for the remittance of the cultivation tax based on the weight and category of the cannabis that enters the commercial market.

(f) Cannabis Removed from a Cultivator's Premises is Presumed Sold.

(1) Unless the contrary is established, it shall be presumed that all cannabis removed from the cultivator's premises, except for plant waste, is sold and thereby taxable pursuant to section 34012 of the Revenue and Taxation Code.

(2) The presumption in subdivision (f)(1) may be rebutted by a preponderance of the evidence demonstrating that the cannabis was removed for purposes other than for entry into the commercial market. Reasons for which cannabis may be removed and not subject to tax on that removal include, but are not limited to, the following:

(A) Fire,

(B) Flood,

(C) Pest control,

(D) Processing by a cultivator, such as trimming, drying, curing, grading, packaging, or labeling,

(E) Storage prior to the completion of, and compliance with, the quality assurance review and testing, as required by Business and Professions Code section 26110, and

(F) Testing.

(g) Receipts for Cannabis Excise Tax Paid to Cannabis Retailers. A purchaser of cannabis or cannabis products is liable for the cannabis excise tax imposed pursuant to section 34011 of the

Revenue and Taxation Code. A purchaser's liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to the State, except as otherwise provided in subdivision (g)(2).

(1) Each cannabis retailer is required to provide a purchaser of cannabis or cannabis products with an invoice, receipt, or other document that includes a statement that reads: "The cannabis excise taxes are included in the total amount of this invoice."

(2) An invoice, receipt, or other document with the required statement set forth in subdivision (g)(1) obtained from the cannabis retailer is sufficient to relieve the purchaser of the cannabis excise tax imposed on the purchase of the cannabis or cannabis products.

(3) A cannabis retailer may separately state a charge for the cannabis excise tax when the cannabis or cannabis products are sold to a purchaser and the separately stated charge shall be equal to the cannabis excise tax required to be paid to a distributor pursuant to section 34011 of the Revenue and Taxation Code.

(h) Excess Cannabis Excise Tax Collected by a Cannabis Retailer.

(1) Definition. When an amount represented by a cannabis retailer to a customer as constituting cannabis excise tax is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the cannabis retailer, the amount so paid is excess cannabis excise tax collected. Excess cannabis excise tax is charged when tax is computed on a transaction which is not subject to cannabis excise tax, when cannabis excise tax is computed on an amount in excess of the amount subject to cannabis excise tax, when cannabis excise tax is computed using a tax rate higher than the rate imposed by law, and when mathematical or clerical errors result in an overstatement of the cannabis excise tax on an invoice, receipt, or similar document.

(2) Procedure Upon the Determination of Excess Cannabis Excise Tax Collected. Whenever the Department determines that a person has collected excess cannabis excise tax, the person will be afforded an opportunity to refund the excess cannabis excise tax collection to the customers from whom they were collected.

(3) Evidence Sufficient to Establish that Excess Cannabis Excise Tax Amounts Have Been or Will Be Returned to the Customer.

(A) If a person already has refunded to each customer amounts collected as excess cannabis excise tax due, this may be evidenced by any type of record that can be verified by audit such as:

1. Receipts or cancelled checks.

2. Books of account showing that credit has been allowed the customer as an offset against an existing indebtedness owed by the customer to the person.

(B) If a person has not already made excess cannabis excise tax refunds to each customer but desires to do so rather than incur an obligation to the state, the person must:

1. Inform in writing each customer from whom an excess cannabis excise tax amount was collected that the excess cannabis excise tax amount collected will be refunded to the customer or that, at the customer's option, the customer will be credited with such amount, and

2. The person must obtain and retain for verification by the Department an acknowledgement from the customer that the customer has received notice of the amount of indebtedness of the person to the customer.

(C) In the event a cannabis retailer is unable to make such refunds to a customer, the cannabis retailer shall remit the excess cannabis excise tax to a distributor pursuant to paragraph 4 of this subdivision.

(4) Cannabis Retailer's Remittance of Excess Cannabis Excise Tax to a Distributor.

(A) Once a cannabis retailer determines that it has collected excess cannabis excise tax and is unable to make a refund to the customer, and has not previously paid the excess cannabis excise tax to a distributor, the cannabis retailer shall remit the excess cannabis excise tax to a distributor licensed pursuant to division 10 (commencing with section 26000) of the Business and Professions Code.

(B) Upon a cannabis retailer's remittance of the excess cannabis excise tax to a distributor, as set forth in subdivision (h)(4)(A), a distributor shall provide the cannabis retailer with an invoice, receipt, or other similar document that contains all of the following:

1. Date of execution of the invoice, receipt, or other similar document,
2. Name of the distributor,
3. Name of the cannabis retailer,
4. The amount of excess cannabis excise tax,
5. The number of the seller's permit held by the cannabis retailer, and
6. The number of the seller's permit held by the distributor. If the distributor is not required to hold a seller's permit because the distributor makes no sales, the

distributor must include a statement to that effect on the receipt in lieu of a seller's permit number.

(5) Distributor's Reporting and Remittance of the Excess Cannabis Excise Tax. A distributor shall report and remit the excess cannabis excise tax collected from the cannabis retailer pursuant to subdivision (h)(4) with the distributor's first return subsequent to receiving the excess cannabis excise tax from the cannabis retailer.

(6) The excess cannabis excise tax provisions in subdivisions (h)(1) through (5) are superseded by the provisions in Regulation 3703 and no longer operative on and after the effective date of Regulation 3703 under Government Code section 11346.1.

(i) Cannabis or Cannabis Products Sold with Cannabis Accessories. A cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer. Unless as otherwise provided below, the cannabis excise tax does not apply to cannabis accessories.

(1) When cannabis or cannabis products are sold or transferred with cannabis accessories (e.g., vape cartridges) to a cannabis retailer, and a distributor separately states the price of the cannabis or cannabis products from the cannabis accessories, the cannabis excise tax applies to the average market price of the cannabis or cannabis products, and not to the separately stated charge for the cannabis accessories.

(A) A distributor that makes a sales price segregation must maintain supporting documentation used to establish the individual cost of the cannabis or cannabis products and the cannabis accessories.

(B) Charges will be regarded as separately stated only if they are separately set forth in the invoice, receipt, or other document issued to the purchaser contemporaneously with the sale. The fact that the charges can be computed from other records will not suffice as a separate statement.

(2) When cannabis or cannabis products are sold or transferred with cannabis accessories (e.g., vape cartridges) to a cannabis retailer, and a distributor does not separately state the sales price of the cannabis or cannabis products from the cannabis accessories, the cost of the cannabis accessories shall be included in the average market price to which the cannabis excise tax applies.

(j) Reporting the Cannabis Excise Tax. A distributor shall report and remit the cannabis excise tax due with the return for the quarterly period in which the distributor sells or transfers the cannabis or cannabis products to a cannabis retailer.

- (1) A person that holds both a cannabis retailer license and a distributor license, or a microbusiness that is authorized to act as a distributor, is subject to the same cannabis excise tax collection and reporting requirements as a person that holds only a distributor license.
- (2) A distributor that sells or transfers cannabis or cannabis products to another distributor is not responsible for collecting the cannabis excise tax from the other distributor.
- (3) Transactions between two distributors shall document that no cannabis excise tax was collected or remitted on the invoice between the two distributors. Documentation shall identify the selling distributor, the selling distributor's license number, the purchasing distributor, and the purchasing distributor's license number. When the transaction is between a distributor and a microbusiness acting as a distributor, the documentation shall indicate that the microbusiness is acting as a distributor.
- (4) The distributor or microbusiness that sells or transfers cannabis or cannabis products to a cannabis retailer is responsible for collecting the cannabis excise tax from the cannabis retailer based on the average market price of the cannabis or cannabis products supplied to the cannabis retailer.

(k) Penalties.

- (1) Penalty for Unpaid Taxes. In addition to any other penalty imposed pursuant to the Fee Collection Procedures Law (commencing with section 55001 of the Revenue and Taxation Code) or any other penalty provided by law, a penalty of 50 percent of the amount of the unpaid cannabis excise tax or cannabis cultivation tax shall be added to the cannabis excise tax and cultivation tax not paid in whole or in part within the time required pursuant to sections 34015 and 55041.1 of the Revenue and Taxation Code.
- (2) Relief from Penalty for Reasonable Cause. If the Department finds that a person's failure to make a payment of the cannabis excise tax or cannabis cultivation tax is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by subdivision (k)(1) for such failure.

Any person seeking to be relieved of the penalty shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

Note: Authority cited: Section 15570.40(b), Government Code; and Section 34013, Revenue and Taxation Code. Reference: Sections 34010, 34011, 34012, 34013, 34015, 55041.1 and 55044, Revenue and Taxation Code; Section 11018.2, Health and Safety Code; and Section 15570.40(b), Government Code.

(A new chapter and regulations to be added to CCR, tit. 18, div. 2)

Regulation 3703. Excess Cannabis Tax

(a) Excess Cannabis Tax. For purposes of this regulation, “excess cannabis tax” means any amount:

(1) A cannabis retailer collected from a purchaser under the representation by the cannabis retailer that it was cannabis excise tax, which was computed upon an amount that is not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the purchaser.

(2) A distributor collected from a cannabis retailer under the representation by the distributor that it was cannabis excise tax, which was computed upon an amount that is not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the cannabis retailer.

(3) A distributor or manufacturer collected from a cultivator under the representation by the distributor or manufacturer that it was cultivation tax, which was computed upon an amount that is not subject to cultivation tax or was in excess of the amount of cultivation tax required to be collected from the cultivator.

(4) A distributor or manufacturer collected from a cultivator under the representation by the distributor or manufacturer that it was cultivation tax, which was computed upon harvested cannabis or harvested cannabis used to make cannabis products that did not enter the commercial market on or before June 30, 2022.

(b) Debt for Unreturned Excess Cannabis Tax. Any amount of excess cannabis tax that is not returned to the purchaser, cannabis retailer, or cultivator that paid it constitutes a debt owed to this state.

(c) Procedures for Cannabis Retailers. When a cannabis retailer ascertains that they have collected excess cannabis tax from a purchaser that has not been paid to the state, they should refund the excess cannabis tax to the purchaser that paid it. If the cannabis retailer is unable or chooses not to refund the excess cannabis tax to the purchaser that paid it, then they shall report and remit it to the Department, unless it was remitted to a distributor pursuant to Regulation 3700 prior to the effective date of this regulation under Government Code section 11346.1.

(d) Procedures for Distributors and Manufacturers.

(1) When a manufacturer ascertains that they collected excess cannabis tax from a cultivator that has not been paid to the state, they should refund the excess cannabis tax to the cultivator that paid it. If the manufacturer is unable or chooses not to refund the excess cannabis tax to the cultivator that paid it, then they shall notify the Department so it can collect the excess cannabis tax from the manufacturer, unless the excess cannabis tax was transferred to a distributor to report and remit to the Department pursuant to Regulation 3700 prior to the effective date of this regulation under Government Code section 11346.1.

(2) When a distributor ascertains that they collected excess cannabis tax from a cultivator or cannabis retailer that has not been paid to the state, they should refund the excess cannabis tax to the cultivator or cannabis retailer that paid it. If the distributor is unable or chooses not to refund the excess cannabis tax to the cultivator or cannabis retailer that paid it, then they

shall notify the Department so it can collect the excess cannabis tax from the distributor, unless the distributor remitted the excess cannabis tax to the Department on or before January 31, 2023.

(e) Determination for Excess Cannabis Tax. When the Department ascertains that a cannabis retailer, distributor, or manufacturer has collected excess cannabis tax that has not been paid to the state, they will be afforded an opportunity to establish that it has been or will be refunded to the purchaser, cannabis retailer, or cultivator that paid it. If the cannabis retailer, distributor, or manufacturer fails or refuses to refund the excess cannabis tax, the Department will issue a notice of determination for the amount of the excess cannabis tax not previously refunded or paid to the state.

(1) A cannabis retailer, distributor, or manufacturer that disagrees with any item included in a notice of determination for excess cannabis tax may file a petition for redetermination with the Department within 30 days from the date that the notice of determination was mailed in accordance with the procedures in article 2a of chapter 1 of division 5 (commencing with section 35005) of title 18 of the California Code of Regulations. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final and collectible at the expiration of that period.

(2) A timely filed petition for redetermination shall be acknowledged and reviewed in accordance with articles 2a and 8 of chapter 1 of division 5 (commencing with section 35005) of title 18 of the California Code of Regulations, and the amount determined to be due becomes final and collectible 30 days after the Department's final decision on the petition was mailed.

(f) Evidence to Establish that Excess Cannabis Tax Has Been or Will be Refunded.

(1) A person may establish that excess cannabis tax was refunded to a purchaser, cannabis retailer, or cultivator by providing any type of record showing the refund that can be verified by audit, such as a receipt, cancelled check, or books of account showing that credit has been allowed the purchaser, cannabis retailer, or cultivator as an offset against an existing indebtedness owed to the person making the refund.

(2) To establish that excess cannabis tax will be refunded to a purchaser, cannabis retailer, or cultivator, the person must:

(A) Inform the purchaser, cannabis retailer, or cultivator in writing that the excess cannabis tax will be refunded to the purchaser, cannabis retailer, or cultivator or that, at their option, they will be credited with such amount as an offset against an existing indebtedness owed to the person making the refund; and

(B) Obtain and retain for verification by the Department an acknowledgement from the purchaser, cannabis retailer, or cultivator that they received notice of the amount of indebtedness of the person to the purchaser, cannabis retailer, or cultivator.

(g) Records. A cannabis retailer, distributor, or manufacturer shall maintain and make available for examination on request by the Department or its authorized representatives all records necessary to determine whether it owes excess cannabis tax to the state. Such records include, but are not limited to:

- (1) Books of account;
- (2) Receipts, invoices, cash register tapes, and other documents of original entry supporting the entries in the books of account; and
- (3) Schedules or working papers used in connection with the preparation of tax returns and reports.

(h) Other Excess Cannabis Excise Tax Provisions Superseded. The excess cannabis excise tax provisions in subdivision (h) of Regulation 3700 are superseded by the provisions in this regulation and no longer operative on and after the effective date of this regulation under Government Code section 11346.1.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011, 34012, 34012.3, 34012.5, 34013 and 34015, Revenue and Taxation Code.

Chapter 8.8. Cannabis Excise Tax Effective on and after January 1, 2023

Regulation 3800. Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit.

(a) Definitions. For purposes of this regulation, the following terms have the following meanings:

- (1) “Business information” means information the Department deems necessary to determine if a person is required to obtain a cannabis retailer excise tax permit from the Department, determine if the person is required to remit the cannabis excise tax it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person’s books and records. Such information includes, but is not limited to, the name of the person’s business, the addresses of the person’s business locations, the date the person’s business started or will start, the business’s business activities, the business’s projected revenue, and the name and contact information of at least one individual the Department may contact to obtain access to the business’s books and records.
- (2) “Contact information” means information the Department deems necessary to contact and communicate with a person applying for a cannabis retailer excise tax permit and with that person’s authorized representative(s). Such information includes, but is not limited to, a current mailing address, email address, and telephone number.
- (3) “Department” means the California Department of Tax and Fee Administration.
- (4) “Identifying information” means information the Department deems necessary to specifically identify a person applying for a cannabis retailer excise tax permit. Such information includes the person’s name, the person’s type (e.g., individual, partnership, limited liability company, corporation, etc.), and the person’s Federal Employer Identification Number, and may also include, but is not limited to, the person’s driver’s

license number or other government-issued identification card number or entity number issued by the California Secretary of State.

(5) “Ownership information” means information the Department deems necessary to identify the owners of an entity or business. Such information includes, but is not limited to, the owners’ names and contact information.

(6) “Representative information” means information the Department deems necessary to verify that the individual who submitted an application for a cannabis retailer excise tax permit is the person applying for a cannabis retailer excise tax permit or is authorized to submit the application on behalf of the person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the individual’s name, title, and contact information.

(b) A cannabis excise tax is imposed upon purchasers of cannabis or cannabis products sold at retail in this state on and after January 1, 2023, pursuant to Revenue and Taxation Code section 34011.2. The tax is 15 percent of the cannabis retailer’s gross receipts from the retail sale of the cannabis and cannabis products to the purchaser on and after January 1, 2023, and the cannabis retailer is responsible for collecting the cannabis excise tax from the purchaser and remitting that tax to the Department.

(c) On and after January 1, 2023, a person must have a cannabis retailer excise tax permit issued by the Department to engage in business as a cannabis retailer.

(d) To obtain a cannabis retailer excise tax permit, a person shall complete and submit an application for a cannabis retailer excise tax permit through the Department’s online services portal via its website at www.cdtfa.ca.gov. Every application for a cannabis retailer excise tax permit shall provide the applicant’s identifying information, contact information, business information, ownership information, and representative information.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011.2, 34014, 34015, 55041.1, 55050 and 55302, Revenue and Taxation Code.

Regulation 3805. Cannabis Excise Tax Credit.

(a) A cannabis retailer may claim a credit on their cannabis tax return for the cannabis excise tax amount the cannabis retailer paid to a distributor, pursuant to Revenue and Taxation Code section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to Revenue and Taxation Code section 34011.2.

The credit must be taken on the cannabis retailer’s cannabis tax return filed for the period in which the retail sale of the cannabis or cannabis products occurred. If the credit is not taken on

the proper return, the cannabis retailer may file a claim for refund for the amount for which they could have claimed a timely credit.

A cannabis retailer may not claim a credit or refund under this regulation for any amount that a distributor refunded to the retailer.

(b) To support a cannabis excise tax credit or refund, the cannabis retailer shall maintain records, such as invoices, receipts, and other similar documents, that can be verified by audit of:

(1) The retail sale of the cannabis or cannabis products to the purchaser on or after January 1, 2023, including the associated unique identifier for the cannabis or cannabis products sold to the purchaser.

(2) The cannabis excise tax paid to the distributor on the cannabis or cannabis products sold to the purchaser, including:

(A) The distributor's name and Department of Cannabis Control license number;

(B) The date the distributor sold or transferred the cannabis or cannabis products to the cannabis retailer;

(C) The amount of cannabis excise tax the cannabis retailer paid to the distributor on the cannabis or cannabis products sold to the purchaser; and

(D) The associated unique identifier for the cannabis or cannabis products on which the cannabis excise tax was paid to the distributor.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011.01 and 55302, Revenue and Taxation Code.

Regulation 3810. Vendor Compensation

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Cannabis excise tax" means the cannabis excise tax imposed by section 34011.2 of the Revenue and Taxation Code.

(2) "Department" means the California Department of Tax and Fee Administration.

(3) "Fee waiver" means a retailer license fee waiver or retailer license renewal fee waiver provided pursuant to section 26249 of the Business and Professions Code.

(4) "Licensed cannabis retailer" means a cannabis retailer, as defined in section 34010 of the Revenue and Taxation Code, that has obtained a retailer license.

(5) "Licensed retail premises" means the physical location from which commercial cannabis activities are authorized to be conducted under a retailer license.

(6) "Retailer license" means a license issued by the Department of Cannabis Control pursuant to division 10 (commencing with section 26000) of the Business and Professions

Code authorizing a cannabis retailer to engage in the retail sale of cannabis or cannabis products to customers.

(b) Requirements to Retain Vendor Compensation. A licensed cannabis retailer may retain vendor compensation in an amount equal to 20 percent of the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under their retailer license for one licensed retail premises, during the periods prescribed by subdivision (d), if the licensed cannabis retailer has received:

(1) Approval from the Department of Cannabis Control for a fee waiver that applies to the issuance or renewal of that retailer license; and

(2) A notice from the Department described in subdivision (c)(4) approving the licensed cannabis retailer to retain vendor compensation from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under that retailer license.

(c) Vendor Compensation Application.

(1) A licensed cannabis retailer must request approval to retain vendor compensation by submitting a completed Vendor Compensation Application to the Department through the Department's online services portal via its website at www.cdtfa.ca.gov.

(2) Every Vendor Compensation Application shall include the following:

(A) The name under which the cannabis retailer transacts or intends to transact business;

(B) The addresses of each licensed premises at which the licensed cannabis retailer is authorized to engage in retail sales of cannabis or cannabis products and indicate the licensed premises where commercial cannabis activities are authorized to be conducted under the retailer license for which the Department of Cannabis Control approved the licensed cannabis retailer's fee waiver.

(C) The number of the licensed cannabis retailer's cannabis tax permit issued pursuant to part 14.5 (commencing with section 34010) of division 2 of the Revenue and Taxation Code;

(D) The issuance and expiration dates and number of the retailer license of the licensed cannabis retailer for which the Department of Cannabis Control approved the licensed cannabis retailer's fee waiver;

(E) The date the Department of Cannabis Control approved the licensed cannabis retailer's fee waiver;

(F) The number of the licensed cannabis retailer's seller's permit issued pursuant to article 2 (commencing with section 6066), chapter 2, part 1, division 2 of the Revenue and Taxation Code; and

(G) The contact information for the individual completing the application. Such information shall include the individual's first and last name, telephone number, and email address.

(3) Each completed Vendor Compensation Application shall also be submitted with the following:

(A) A copy of the Department of Cannabis Control approved fee waiver issued to the licensed cannabis retailer; and

(B) A copy of the retailer license of the licensed cannabis retailer for which the Department of Cannabis Control approved the licensed cannabis retailer's fee waiver.

(4) The Department will notify the licensed cannabis retailer in writing as to whether they are approved to retain vendor compensation. If they are approved, the Department will also specify the quarterly periods for which they are approved to retain vendor compensation, as provided in subdivision (b), from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under their retailer license referred to in subdivision (b).

(d) Retention Periods.

(1) An approval to retain vendor compensation is effective on the first day of the calendar quarter commencing after the date in which the Department issued the notice approving a licensed cannabis retailer's Vendor Compensation Application and is valid for that calendar quarter. For example, if the Department issued the notice approving a cannabis retailer's Vendor Compensation Application on February 22, 2023, the cannabis retailer's approval is effective April 1, 2023, and the cannabis retailer is approved to retain vendor compensation, as provided in subdivision (b), from the cannabis excise taxes they are required to report to the Department for the second calendar quarter of 2023.

(2) In general, an approval to retain vendor compensation shall remain valid for four consecutive calendar quarters beginning with the first calendar quarter commencing after the date the Department issued the notice approving the licensed cannabis retailer's Vendor Compensation Application and shall expire at the end of that one-year period. For example, if the Department issued the notice approving a licensed cannabis retailer's Vendor Compensation Application on February 22, 2023, then the cannabis retailer will be approved to retain vendor compensation, as provided in subdivision (b), from the cannabis excise taxes

they are required to report to the Department for the second, third, and fourth calendar quarters of 2023, and first calendar quarter of 2024, unless the approval to retain vendor compensation expires earlier under subdivision (d)(3).

(3) Unless an approval to retain vendor compensation would expire earlier, pursuant to subdivision (d)(2), it shall expire on the last day of the calendar quarter commencing after the date the Department of Cannabis Control first notifies the Department that the cannabis retailer is no longer eligible for a fee waiver, pursuant to subdivision (a)(5) of section 34011.1 of the Revenue and Taxation Code, by either:

(A) Updating a database maintained by the Department of Cannabis Control and accessible to the Department to reflect that the cannabis retailer has become ineligible for a fee waiver; or

(B) Otherwise providing information to the Department reflecting that the cannabis retailer has become ineligible for a fee waiver at the Department's request and for purposes of verifying a cannabis retailer's eligibility to retain vendor compensation.

For example, if the Department of Cannabis Control first notifies the Department on March 20, 2024, that a cannabis retailer has become ineligible for a fee waiver, the cannabis retailer's approval to retain vendor compensation expires at the end of the second quarter on June 30, 2024, unless the approval to retain vendor compensation already expired earlier under subdivision (d)(2).

(4) A licensed cannabis retailer may not retain vendor compensation from the cannabis excise taxes required to be reported to the Department for any period commencing after the date their approval to retain vendor compensation expires.

(e) License Limitation. An approval to retain vendor compensation issued under this regulation only approves a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under their retailer license referred to in subdivision (b), including retail sales authorized under that retailer license after it was renewed. An approval to retain vendor compensation does not approve a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on any other retail sales. Such retail sales include, but are not limited to, retail sales made after their retailer license referred to in subdivision (b) expired and before that retailer license was renewed or made after that retailer license was revoked or made under any other retailer license, including a new retailer license for the same premises.

(f) New Application Requirement. If a licensed cannabis retailer's approval to retain vendor compensation has expired or their retailer license referred to in subdivision (b) has expired and

not been renewed or has been revoked, the licensed cannabis retailer must submit a new Vendor Compensation Application to the Department as provided in subdivision (c) along with:

- (1) A copy of the current Department of Cannabis Control approved fee waiver issued to the licensed cannabis retailer; and
- (2) A copy of the current retailer license of the licensed cannabis retailer for which the Department of Cannabis Control approved the licensed cannabis retailer's fee waiver.

(g) Claiming Vendor Compensation.

- (1) If approved, a licensed cannabis retailer shall report the amount of vendor compensation retained from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products, pursuant to subdivision (b), as a credit on their Cannabis Retailer Excise Tax Return for the corresponding reporting period in which they made the retail sales of cannabis or cannabis products.
- (2) If a licensed cannabis retailer remits any amount of cannabis excise tax to the Department that they were eligible to retain under this regulation, then the licensed cannabis retailer must file a timely claim for refund to obtain a refund for that amount.

(h) Expiration. A licensed cannabis retailer shall not retain vendor compensation from cannabis excise taxes imposed on retail sales of cannabis or cannabis products made after December 31, 2025.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34010, 34011.1 and 34011.2, Revenue and Taxation Code.